

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

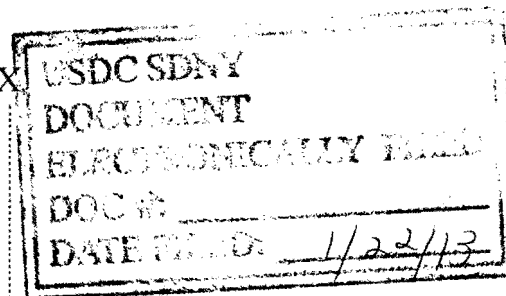
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ABU DHABI COMMERCIAL BANK, et al.,

Plaintiffs,

- against -

**MORGAN STANLEY & CO.
INCORPORATED, MORGAN STANLEY &
CO. INTERNATIONAL LIMITED, MOODY'S
INVESTORS SERVICE, INC., MOODY'S
INVESTORS SERVICE LTD., STANDARD
AND POOR'S RATINGS SERVICES and THE
McGRAW HILL COMPANIES, INC.,**

Defendants.
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ORDER

08 Civ. 7508 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

At a December 27, 2012 conference, I addressed plaintiffs' request to preclude defendants Moody's Investors Service, Inc. and Moody's Investors Service Ltd. (collectively "Moody's") and Standard & Poor's Ratings Services and The McGraw Hill Companies, Inc. (collectively "S&P") from introducing testimony of three different experts on the subject of ratings issues. I ordered that each rating agency could introduce one expert and that those two experts should not repeat each others' testimony.¹ I stated that S&P would not be permitted to

¹ See Dec. 27, 2012 Hearing Tr. at 53:1-18 ("Fabozzi should go and Birtel and [Bradford] Cornell should not be allowed to repeat each other.").

introduce the testimony of both Ryan Birtel and Frank Fabozzi on similar or identical topics and directed them to choose one expert.²

On January 15, 2013, following Birtel's deposition on January 4, S&P submitted a letter stating that it would agree to have only Fabozzi testify at trial if he could supplement his original expert report with issues originally addressed by Birtel.³ Plaintiffs responded, also on January 15, arguing that S&P should not be permitted to untimely supplement its expert reports, particularly after waiting to "assess Birtel's deposition testimony and only then 'supplement' Fabozzi's testimony."⁴

In the interest of avoiding gamesmanship and preventing duplicative expert testimony, defendants will not be permitted to supplement Fabozzi's report. Birtel may testify and Fabozzi may also testify but only as to issues not covered by Birtel. Plaintiffs and S&P are directed to agree on which matters will be covered by Birtel and which will be covered by Fabozzi. If they cannot agree then the

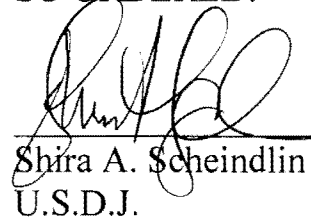
² See *id.* ("I don't see why we need Fabozzi . . . to improperly bolster Birtel.").

³ See 1/15/13 Letter from C. Gilman to the Court at 1.

⁴ 1/15/13 Letter from D. Drosman to the Court at 2. The letter notes that "S&P gave no indication at the December 27, 2012 hearing [or before or during Birtel's January 4, 2013 deposition] that it intended to drop Birtel." *Id.* at 2-3.

depositions and reports of Birtel and Fabozzi must be submitted to the Court and I will decide which matters Fabozzi will be permitted to cover.

SO ORDERED:



Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
January 22, 2013

- Appearances -

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